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UNCLAS SECTION 01 OF 02 TEGUCIGALPA 002861

SIPDIS

SENSITIVE

STATE FOR EB/TPP (SDONNELLY), EB/TPP/MTA/IPC, AND OES  
STATE FOR WHA/CEN AND WHA/EPSC  
STATE PASS USTR  
COMMERCE ALSO FOR USPTO  
STATE PASS AID FOR LAC/CEN

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [SOCI](#) [TBIO](#) [PGOV](#) [HO](#) [WTRO](#)

SUBJECT: AIDS DRUGS AND THE WTO: THE EXPERIENCE OF HONDURAS

1. (SBU) Summary and Action Request: The GOH has been seeking to be the first country to use the August 30 WTO decision on Access to Medicines in order to stretch its limited HIV/AIDS treatment funds. Discussions with USG officials have revealed that the GOH would not need to use this decision for a planned upcoming medicines purchase, as it can make use of existing provisions in the WTO TRIPS Agreement. The unhappy GOH reaction to this discovery, however, has revealed a fundamental misunderstanding on the GOH's part as to the purpose of the August 30 decision. This misunderstanding may well exist in other developing countries facing AIDS crises. Embassy believes it would be useful to have a coordinated outreach effort to explain the August 30 decision, existing TRIPS flexibility and USG policy in this area for use with foreign governments. Otherwise, (at least in Honduras and similar countries), the USG runs the risk of being blamed for positions the U.S. never advocated, and of losing good will which the U.S. may have hoped to win by our support of the August 30 decision and its eventual inclusion in the TRIPS agreement. End Summary and Action Request.

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GOH: How Do We Use the August 30 Decision?  
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2. (SBU) EconOffs were called to the Ministry of Industry and Trade on October 17th for a meeting with Minister Norman Garcia and Vice Minister for External Trade Irving Guerrero. The Honduran officials explained that Honduras is preparing to purchase generic copies of three AIDS drugs from Indian manufacturers, and they want to make the purchase under the terms of the August 30, 2003, decision of the WTO. (This decision, regarding paragraph 6 of the Doha Declaration on the TRIPS agreement and public health, as Post understands, was intended to allow poor countries suffering from national health emergencies to import cheaper generics made under compulsory licensing if they are unable to manufacture the medicines themselves.)

3. (SBU) The drugs to be purchased are AZT, 3TC and Combivir, all patented by GlaxoSmithKline, a British firm. The producers are two Indian companies named Cipla and Rambaxy. The purchase would be made with the GOH's own money, and arranged through the IDA (International Dispensary Association), a broker based in the Netherlands. This would be the second Honduran government purchase of AIDS medicines this year; in August, the Ministry of Health purchased the same drugs through the IDA using money from the Global Fund. According to Vice Minister Guerrero, the price being offered by the Indian manufacturers is 30 to 40 percent lower than the best price offered by GlaxoSmithKline. The GOH's current stocks of these drugs are expected to run out between February and April 2004.

4. (SBU) The GOH's initial concern was that the official mechanism for notifying the WTO of a purchase under the August 30 decision was not yet in place. Vice Minister Guerrero had obtained a form from the IDA that purports to be a "waiver" form, to be used for WTO notification in such cases. However, Guerrero acknowledged that this form was not officially approved by the WTO. Fearing negative repercussions if the GOH somehow failed to follow the correct procedures for making the purchase and notifying the WTO, Guerrero asked for EconOffs' assistance in clarifying the proper procedures.

5. (SBU) Honduras is the HIV/AIDS epicenter in Central America, accounting for approximately 60 percent of the HIV infections in the region. It is estimated that Honduras has between 66,000 and 100,000 infected persons, and that between 5,000 and 7,000 Hondurans become infected with HIV annually. The disease disproportionately affects the Afro-Caribbean minority on the North Coast of Honduras. As of February 2003, only 300 people were under ARV (antiretroviral) treatment, but this increased to 1,100 people as of September, thanks to the Global Fund-supported purchase of ARVs. The medicines are distributed through five treatment

sites (government hospitals, not NGOs): two in Tegucigalpa, one each in San Pedro Sula, Choluteca, and La Ceiba. There is much to be done, however, to meet Millennium Challenge and Special Summit of the Americas goals on AIDS treatment.

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Consultations Indicate that the Agreement Isn't Relevant  
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16. (SBU) In a series of e-mails and telephone calls between the Embassy, State/EB, USTR and the GOH, it became clear that the GOH did not need to use the August 30 decision in this specific case. After receiving confirmation that the drugs would be shipped directly from India to Honduras, it was explained that the proposed purchase would not be covered by the August 30 decision, since the exporting country (India) does not have patent protection for the drugs in question.

17. (SBU) For the proposed purchase, the GOH would be able to issue a compulsory license as outlined in Article 31 of the TRIPS Agreement, and pay the remuneration to the patent owner itself (if there are valid GSK patents in Honduras). The amount of the "adequate remuneration" paid to the patent holder, GlaxoSmithKline, would be determined by the GOH.

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The GOH Reaction: Frustration, Even Some Suspicion  
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18. (SBU) The initial reaction of GOH officials to the discussion with USG officials -- "So the August 30 decision doesn't work, it does nothing for countries like us," and "Why is the WTO issuing decisions that are meaningless?" -- revealed a fundamental misunderstanding of the purpose of the August 30 decision or the working of the TRIPS Agreement. The officials seemed disappointed they would have to pay remuneration under TRIPS Article 31, apparently unaware that such remuneration is also required under the provisions of the August 30 decision. At the time, GOH officials even suggested that the narrow coverage of the August 30 decision was intentional and the agreement, advertised as a breakthrough for poor countries suffering from the HIV/AIDS epidemic, was never meant to work. The tenor of their remarks also indicates a certain amount of blame being apportioned to the U.S.

19. (SBU) Subsequently, GOH trade officials have come to understand that remuneration to the patent holder must be paid under either Article 31 or the August 30 decision, and they do now recognize that buying generic AIDS medications according to Article 31 and paying remuneration to the patent holder still would result in substantial savings compared to the full price. While the GOH has not yet determined its next steps, it apparently has not made any effort to negotiate a lower price directly with the patent holder.

110. (SBU) Comment: EconOffs have discussed this issue at length with the GOH, emphasizing the USG's sincere intent to assure cost-effective availability of AIDS medicines, and, we believe, we have cleared up some misunderstandings. However, we believe that detailed guidance from Washington agencies on USG policy regarding TRIPS Article 31 and the August 30 decision would be very helpful to our efforts here to encourage GOH respect for intellectual property rights and at the same time address the GOH's goal of increasing HIV/AIDS treatment. We expect that such guidance would also be useful in many other posts around the world. End comment.  
Pierce